

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

LMJ Services Ltd Vs. RIICO & Anr.
S.B. CIVIL FIRST APPEAL NO.508/2005

Against judgment and decree dated
20.09.2005 passed by District Judge,
Jodhpur in Civil Original Suit No.
170/2003 - LMJ Services Ltd. Vs. RIICO &
Anr.

DATE OF JUDGMENT: 17th May, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. M.C. Bhoot for appellant.
Mr. R.K. Mehta for respondents.

BY THE COURT:

The present appeal, which is still at the admission stage, at the request of learned counsel for parties has been heard and is being disposed of at this stage itself.

The appeal under Sec. 96 CPC has been filed by plaintiff-appellant against the judgment and decree dated 20.09.2005 passed by

District Judge, Jodhpur in Civil Original Suit No. 170/2003 – LMJ Services Ltd. Vs. RIICO & Anr., dismissing the suit of the plaintiff.

Briefly stated, the facts giving rise to the present appeal are that the appellant-plaintiff, a registered company under the Indian Companies Act, filed a suit before the Court of learned District Judge, Jodhpur on 17.05.2003 stating, inter-alia, therein that in pursuance to the sealed tenders invited by respondent-defendant Rajasthan State Industrial Development Corporation Ltd. (to be referred hereinafter as 'RIICO') for allotment of Plot No. C/1, Industrial Estate, Jodhpur and building thereon, it was allotted to the plaintiff and in this regard information to the plaintiff was conveyed by the then Regional Manager of RIICO vide letter dated 21.03.2001. The Senior Regional Manager of RIICO also vide his letter dated 28.02.2001 informed to the plaintiff about the acceptance of the bid for allotment and demanded a sum of Rs.32,25,000/- plus development charges Rs.8,06,000/-, and the plaintiff on the very same day deposited a sum

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of Rs.7,60,000/-. It was further averred in the plaint that a sum of Rs.50,000/- was already deposited with the defendant Corporation as Security Money, thus the total amount deposited by the plaintiff was Rs.8,10,000/-, which was accepted by the defendant Corporation and as the allotment of land and the premises was finalized in favour of the plaintiff, the office of defendant Corporation at Jodhpur through its letter dated 21.03.2001 asked the plaintiff for depositing service charges Rs.4205/- within a period of 60 days. The allotment was on lease of 99 years so the plaintiff was also asked to deposit annual rent Rs.310/- and the plaintiff deposited Rs.4515/- on 31.03.2001 vide receipt dated 31.03.2001. It was further stated in the plaint that a promise was made to the plaintiff that on execution of the lease-deed, after receipt of the balance amount Rs.24,15,000/- within 60 days, the possession would be handed over to the plaintiff within 24 hours thereof. The amount was offered by the plaintiff and the then Advisor of defendant Corporation in writing informed that the balance amount would

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be received at the time of handing over of the possession. It was also averred in the plaint that the plaintiff was ever ready and willing to complete its part but the defendant Corporation always delayed the matter by asking for time and ultimately by letter dated 31.03.2003 enclosing a cheque of Rs.9,58,016/- favouring plaintiff, it was informed that the allotment dated 21.03.2001 made in favour of the plaintiff has been withdrawn. The plaintiff sent a notice through Advocate to defendant No.1 Corporation after receipt of the said communication alongwith cheque and also gave copy of notice to defendant No.2, who was its Regional Manager and the same was received but defendant No.2 under a conspiracy and his vested personal interests, by letter dated 23.04.2003 refused to comply the notice, hence it became essential for the plaintiff to file the suit.

The defendants filed their written statement and denied the claim of the plaintiff. It was their stand that on account of unavoidable administrative reasons the

possession of the disputed land could not be handed over to the plaintiff and against this allotment the industrial organizations had also raised a voice. It was also stated that due to the pendency of the writ petitions filed before the High Court concerning the disputed land, the handing over of the possession could not take place and thereafter at the administrative level it was decided that the allotment be cancelled. The prevailing circumstances were brought before this Court in those writ petition and in pursuance thereof the aforesaid writ petitions were dismissed as having become infructuous but the plaintiff concealed that material fact in the plaint. The defendants denied having assured the plaintiff in any way and stuck to their decision of cancellation having been made for administrative reasons. The allegation of vested interest of defendant No.2 was totally refuted. It was submitted that the amount deposited with Corporation by the plaintiff was returned with interest to the plaintiff and as the balance 75% amount was not received, the defendants in the circumstances were right in cancelling the allotment. In the

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additional pleas, it was stated that the allotment to the plaintiff of the land and building vide letter dated 21.03.2001 was cancelled on 31.03.2003 withdrawing the allotment dt. 21.03.2001. It was prayed that the suit of the plaintiff be dismissed with cost of Rs.5,000/-

On the pleadings of the parties, the trial Court framed the following issues:

- (1) whether the plaintiff is entitled to receive possession of the commercial estate and constructed building C-1, measuring 1314 sq.mt., as mentioned in the plaint?
- (2) whether the plaintiff was ready and willing to perform his part of the work and will be ready to do so?
- (3) whether the defendants have the right to cancel the allotment of disputed land and building?
- (4) Relief?

Heard learned counsel for the parties and perused the material available on record.

It has been contended by the learned counsel for the appellant that the appellant was always ready and willing to perform his part of contract and the facts of the present matter would reveal that the required part of contract as far as appellant-plaintiff is concerned was complete in all respects, therefore, the trial Court has committed an illegality in not decreeing the suit for specific performance. It has next been contended that the law is almost settled on the point that in cases arising out of contracts where specific performance is required to be made then normally as a matter of rule the decree is required to be passed in favour of plaintiff and only in exceptional cases decree for specific performance has to be rejected. Learned counsel has submitted that the trial Court committed error of law while deciding issue No.1 on the basis of evidence adduced by both sides because the plaintiff had deposited the development charges alongwith service charge and also the rent required by the respondent-defendant for the land allotted. It has also been contended that the cancellation

of plot, the intimation of which was conveyed to the plaintiff, was the malafide act of defendant respondent No.2 as defendant respondent No.2 for his personal interest and gains wanted that the possession of the plot in question be not handed over to the plaintiff. It has been submitted further that the public interest writ petitions, reference of which has been made by the learned trial Court in its impugned judgment, has got nothing to do with the present matter and infact the present case requires to be decided on the basis of material available on the record. The learned counsel submitted in the last that the observation made by the learned trial Court that withdrawal/cancellation of the plot allotted to the plaintiff was for the reason that writ petitions were pending in the High Court, is without any substance and the trial Court has not properly appreciated the matter.

On the other hand, it has been contended that it is correct to say that the allotment of the plot was made to the plaintiff but at the same time when several organizations

opposed the allotment made to the plaintiff and agitations were led, the matter was considered in the Board meeting of the defendants at Headquarters and ultimately decision to cancel the allotment in public interest was taken and therefore the allotment was cancelled and the plaintiff was intimated accordingly. The learned counsel submits that as many as four Writ Petitions were filed before the High Court and in those writ petitions the allotment made in favour of the plaintiff was under challenge and it is because of the pendency of the writ petitions, finally the allotment could not be made and possession could not be given and the Hon'ble High Court was intimated about the fact that allotment made in favour of the plaintiff was cancelled. According to the learned counsel, on furnishing the above information to the High Court by the respondents in the writ petitions, the writ petitions were disposed of. The learned counsel submits that the plaintiff was well aware of all the facts and he was also a party in all those writ petitions but cleverly he has not disclosed all these facts while filing the plaint which was filed after

dismissal of the writ petitions in the High Court. It has further been contended that terms and conditions and the rules and regulations particularly Rule 27 of the Rajasthan State Industrial Development & Investment Corporation Limited:Jaipur, Disposal of Land Rules, 1979 (to be referred hereinafter as 'Disposal Rules of 1979') give ample authority to the respondents to revoke or cancel the allotment made at any time before finality is arrived in the matter. Learned Counsel further submits that Memorandum of Association and Articles of Association of RIICO also go to show that the contracts entered between RIICO on the one side and the Industry on the other side can be revoked and at a subsequent stage of the allotment of the industrial plot in the present matter made in favour of the plaintiff was cancelled for the administrative reasons. The learned counsel also submits that the suit as filed by the plaintiff was not maintainable because in the suit, prayer was made for handing over possession and execution of the lease deed whereas in the present case before filing of

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the suit, the allotment had already been cancelled.

I have considered the submissions made before me.

In the present case, the points which require consideration are as under:

(1) Whether the issues framed in the case have been correctly disposed of by the learned trial Court or not?

(2) Whether the plaintiff in the facts and circumstances of the case was entitled to the relief claimed for in the suit?

(3) Whether the judgment and decree passed by the learned trial Court requires any interference by this Court?

Point No.1 & 2:

Point No.1 & 2 are inter-related, as such the same are being disposed of together.

It is to be seen that the learned trial Court framed Issue No.1 & 2 in relation to entitlement of plaintiff to seek a decree for possession of the industrial plot allotted and also with regard to the ready and willingness of the plaintiff to perform its part of contract. In the instant case, the facts which are not in dispute are that plaintiff is a company registered under the Companies Act and the defendant is an instrumentality of the State. The defendant allots industrial plots to the industrialists for industrial development in the State. The defendant conducts its business under the Memorandum of Association and Articles of Association and also under the Disposal Rules of 1979. The admitted position, which comes on record, is that plaintiff's bid was accepted by the defendant on 27.02.2001 for the disputed plot, the plaintiff was intimated about the same and asked to deposit 25% development charges by 28th February 2001 and thereafter the plaintiff deposited the required development charges with the defendant. It is also an admitted position that service charge

and rent was also deposited by the plaintiff in view of intimation/letters/notice sent to the plaintiff by the defendant. The plaintiff has stated in the plaint that he conveyed to Mr. Farooqui, the Advisor of the defendant that since possession was not being handed over to the plaintiff of the allotted industrial plot and certain persons were trying to encroach upon the plot allotted to the plaintiff, therefore, the matter required early disposal and since the defendants failed to perform their part of contract and ultimately cancelled the plot allotted to the plaintiff, it became essential for him to file a suit for specific performance. The plaintiff has also asserted malafides against defendant No.2 and stated that on account of his vested interest the possession of the industrial plot could not be given to him. The defendants in their written statement, while admitting that the allotment of the plot was made to the plaintiff denied the allegation of malafide on the part of respondent No.2 and stated that the plot in question has not been allotted to anybody else. It has been the stand of the defendants in the

written statement that there were public agitations and as many as four public interest litigations were filed in the High Court and it is in the above circumstances, for the administrative reasons, a decision was taken to cancel the allotment and as such the allotment was cancelled under the disposal rules of 1979 and according to the Articles of Association the defendant could take such decision to rescind or to cancel any proposal made earlier. The evidence, which has been led in the case, reveals that PW1 Hulas Chand Jain has narrated the manner in which the allotment was made and showed the ready and willingness of the plaintiff company to perform its part of contract and stated that infact the balance amount was sent to the RIICO but the same was returned. It has also been stated that no possession has been handed over to them. In the cross examination, he has stated that it is not correct to suggest that during the pendency of the writ petition it was informed to the plaintiff that the allotment of the industrial plot was cancelled. He has admitted that the writ petitions were dismissed by the High Court

but has stated that he does not know the reason why the same were dismissed. He has also admitted receiving a cheque sent by RIICO in relation to the amount deposited by him and stated that he did not accept the cheque. He has stated that no challenge has been made to the cancellation of allotment by him anywhere else. He has proved documents Exs. 1 to 4 which are in relation to acceptance of bid, intimation sent regarding allotment of industrial plot to the plaintiff company, the letter written to the plaintiff by the Advisor of defendant Mr.S.A. Farooqui that the balance amount shall be received at the time of handing over of the actual possession of the plot to the plaintiff, and Ex.4, a letter written on behalf of the plaintiff.

On behalf of the defendants, Mr. J.P. Gupta has been examined as DW1 and this witness has stated that possession of the allotted plot was not handed over to the plaintiff for the reason that there were several agitations by the industrial and other organizations. He has also stated that 4 writ petitions were filed in

the High Court and in view of the circumstances the Board considered the matter and in its meeting decision was taken to cancel the allotment of the industrial plot made in favour of the plaintiff, therefore, the allotment made in favour of the plaintiff earlier was withdrawn and cancelled. It is also stated by him that the plaintiff was intimated about the fact of cancellation of allotment on 21.03.2003. The amount deposited by the plaintiff was also returned by issuing a cheque and the writ petitions on intimation about cancellation of of the industrial plot were dismissed. A lengthy cross examination has been addressed to this witness but the fact that defendants took decision to cancel the allotment of industrial plot to the plaintiff on account of agitations by industrial and other organizations in Jodhpur, could not be controverted. This has also been established from the cross examination of this witness that the writ petitions were dismissed on account of the information supplied to the Hon'ble High Court that the allotment of industrial plot made in favour of the plaintiff was cancelled.

The witness has denied the allegations of malafide and has proved Ex.A/1 to A/4, the certified copies of the orders passed by Hon'ble High Court in Writ Petitions No. 4223/2001, 1604/2001, 1552/2001, and 1699/2001 which were disposed of stating the reason as under:

“Having regard to the statement of learned counsel for the respondents, the writ petition has been rendered infructuous and the same is disposed of as such”.

A perusal of the material available on record clearly indicates that the allegations of malafide by the plaintiff against defendant No.2 have not been established and there cannot be a reason to believe that defendant No.2 was interested that allotment made in favour of the plaintiff should be cancelled for the reason that there was no enmity whatsoever between the plaintiff and defendant No.2 and further for the reason that plot allotted to the plaintiff after its cancellation has not been allotted to anybody else. It is further to be seen that when the matter came up for consideration before the High Court in public interest

litigation with regard to the allotment of industrial plot made in favour of the plaintiff, the plaintiff appellant was party in all those 4 writ petitions and the Hon'ble Court on the basis of information furnished by the respondents disposed of the writ petitions, however, no objection was raised by the plaintiff at that point of time to the effect that since allotment has been made in his favour then it was not required to be cancelled. The plaintiff kept mum there. It is correct that there was no stay by the High Court in the above 4 writ petitions but it can safely be presumed that the plaintiff was aware of the fact that in the 4 writ petitions filed in the High Court, the matter regarding allotment made by the defendant of the industrial plot in his favour was under challenge. In such circumstances, it was essential for the plaintiff to have stated all these facts in the plaint but it appears that he has not done so. It is also to be noticed here that the main object of the RIICO is to promote, establish and execute industries, projects or enterprises for manufacture and

production of goods, plant, machinery, tools, implements, materials or substances of any description whatsoever which in the opinion of the Company are likely to promote or advance the industrial development of Rajasthan. The main objects have been stated in the RIICO's Memorandum of Association and a perusal thereof indicates that for the industrial development in the State not one but so many objects are there. Keeping in mind, the objects of RIICO, on examining the present facts and circumstances of the case, it does not appear that there was any malafide on part of defendant No.2 to persuade the defendant No.1 to cancel the allotment of the plot made in favour of plaintiff. The main reason for cancellation as it appears was that agitations against allotment to plaintiff took place in Jodhpur and in the circumstances it became a difficult task for the defendants to continue with the allotment, as such the defendants in their Board meeting considered the entire matter and took a decision to cancel the allotment.

Now, the question is as to whether any authority vested in the defendants to cancel

the allotment? In this connection, Rule 27 of the Disposal Rules, 1979 is relevant, which is being reproduced hereunder:

27. RESERVATION OR REVOCATION OF PLOT:

“If in the opinion of the Corporation, any plot or area is required to be reserved or withdrawn from allotment the Corporation may at any time reserve such plot or area or revoke any proposal to dispose off such a plot or area. The Corporation reserve the right not to allot a plot of party's choice or not make allotment at all without assigning any reasons. The land area to be allotted or a particular type of industry shall be decided by the Corporation, which shall be final”.

It shall also be relevant to reproduce here Article 93(xv),(xvi) of the Articles of Association, which reads as under:

93. without prejudice to the general powers conferred by the Articles hereinbefore and hereafter it is hereby expressly declared that the Director shall subject to the provisions of these Articles and of the

Companies Act, have the following powers that is to say powers:

(xv) From time to time to make, vary and repeal byelaws or the regulations of the business of the Company, its officers and servants.

(xvi) To enter into all such negotiations and contracts and rescind and vary all such contracts, and execute and do all such acts, deeds and things in the name and on behalf of the Company as they may consider expedient for or in relation to any of the matters aforesaid, or otherwise for the purpose of the Company.

The above provisions so also the provisions of Disposal Rules, 1979 authorizes the defendant to take suitable action for revocation of any proposal made earlier. It is correct that it should not be an arbitrary act and in the instant case the material which has been brought on record clearly indicates that the defendant has considered the matter properly and in the facts and circumstances it became rather impossible for the defendants to have continued the allotment made in favour of the plaintiff. Sec.20 of the Specific Relief

Act also states that where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff then in such matters the Court can in its discretion refuse to grant the decree sought for specific performance. In the instant case, the cancelled plot has not been allotted to anybody else, therefore there exists no question of hardship to the plaintiff but the defendant definitely could not foresee that allotment of industrial plot to the plaintiff would cause them hardship for various reasons.

In view of foregoing discussion, the answer to point No.1 & 2 is that the trial Court has correctly disposed of Issue No.1, 2 & 3 holding that plaintiff was ready and willing to perform his part of contract but was not entitled to seek possession and the defendant has the authority to cancel the allotment.

Point No.3:

In view of answer to Point No.1 & 2,

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there appears no reason to interfere with the findings recorded by the trial Court and the judgment and decree passed by trial Court requires to be upheld.

In the result, the appeal is devoid of merit and the same is hereby dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa